IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4965 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHRI S.D.PATEL,EXECUTIVE ENGINEER (C PERT UNIT),CENTRAL

Versus

STATE OF GUJARAT, NOTICE TO BESERED THROUGH SECRETARY,

Appearance:

MR HD VASAVADA for Petitioner

MR PREMAL JOSHI, AGP, for the respondents.

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 23/03/2001

ORAL JUDGEMENT

By this petition, the petitioner has challenged the order dated 7.5.87 passed by the respondents, compulsorily, retiring him by terminating his services with effect from 8.5.87 on the ground that it is unjust, illegal, unreasonable and in violation of the provisions of the

Constitution.

A few material facts may be stated, at the outset, with a view to appreciate the merits of the petition. The petitioner joined services of the State Government in the year 1957 as Workcharge Survey Mistry. Later on, he was made an Overseer (Junior Engineer) on 13.6.1957. He was made, the Deputy Engineer in December 1962, and continued as Deputy Engineer until July 1978. Subsequently, he was promoted to the post of Executive Engineer on 17.7.78. According to the petitioner, he was due for promotion for the post of Superintending Engineer and in the meantime, the respondent authority passed the impugned order. Hence, this petition under Article 226 of the Constitution of India.

On behalf of the respondent authority, one Mr.J.A.Pandya, Under Secretary to the Government of Gujarat, Narmada Development Department, filed affidavit in reply. The allegations, averments and contentions raised in the petition against the impugned order of compulsory retirement are denied. The petitioner was made to retire upon completion of 55 years of age in the public interest in view of the provisions of Rule 161 of the Bombay Civil Service Rules 1959 (BCSR).

It is found from the record of the present case that the respondent Government had decided to weed out inefficient, corrupt officers whose integrity is doubtful. In pursuance of such a policy, reverting to rule 161 of the BCSR, the Government had reviewed the case of the petitioner upon attaining the age of 55 years. After careful consideration and due deliberations, the respondent Government had come to the conclusion that it was not in the public interest to continue him in service as his integrity was doubtful. Therefore, the impugned order was passed on 7.5.87. Consequent to the impugned order, the petitioner was made to retire.

It is very clear from the affidavit in reply that the respondent Government had taken into consideration all the material and relevant facts and circumstances and the entire service record, including the confidential remarks before passing the impugned order. The petitioner was punished in the past for his illegal and irregular conduct after holding departmental inquiry. Thus the petitioner was found guilty and delinquent, and therefore, after observing necessary procedure in a domestic inquiry, he was punished.

In course of inquiry and from the report of inquiries conducted against the petitioner, it was found that substantial loss was caused to the Government's interest and the integrity of the petitioner was, also, doubtful. Even when the reply was filed, four departmental inquiries were pending against the petitioner. So, prima facie, the department was of the view that continuance of the petitioner in service beyond 55 years would not be in the public interest since his integrity was doubtful.

The respondent authority has, also, in clear terms stated that service record of the petitioner was not good and that is the reason why his case was reviewed in terms of rule 161 of the BCSR. He had also committed several illegalities and irregularities while performing his duties as an Executive Engineer and the same were brought to the notice of the higher authorities. He was served with chargesheets and he was found guilty and delinquent on two occasions and therefore, he was punished. On both the occasions, his one increment without future effect was stopped for one year. It is, in this context, departmental authority found that his service record is unclean and not free from doubt. The integrity of the petitioner was noticed to be doubtful. It is, also, very clear from the affidavit in reply that on three earlier occasions adverse remarks were passed against the petitioner by the respondent authority. The representations made against the adverse remarks were rejected and the petitioner had not challenged the same in appeal. The working of the petitioner was not found to be satisfactory by the respondent and since his integrity was doubtful, the authority thought it fit not to continue him in public interest.

In view of the facts and circumstances emerging from the record of the present case, the design and desideratum of the provisions of rule 161 of the BCSR and the settled proposition of law, since compulsory retirement is not a punishment, the petition is found quite meritless and is required to be rejected. Accordingly, it is rejected. Rule discharged with costs.

(J.N.Bhatt, J.)

(vjn)